

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MYRTLE A. MCKINNEY**

Claimant

VS.

**CITY OF MANHATTAN**

Self-Insured Respondent

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Docket No. 1,014,863

**ORDER**

Claimant requests review of the February 26, 2004 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

Following a preliminary hearing the ALJ denied claimant's request for medical treatment with Dr. Kimball Stacey. The ALJ concluded claimant suffered from an intervening accident that occurred at her home several months after her March 29, 2003 compensable injury. He further found that her present need for treatment was wholly related to the intervening accident and as such, she was not entitled to the treatment she now seeks.

The claimant requests review of this determination alleging the ALJ erred in failing to conclude her need for treatment was related to the compensable injury.

Respondent argues that there is no jurisdiction for the Appeals Board (Board) to hear this appeal under K.S.A. 44-534a. Alternatively, respondent contends that the weight of the evidence supports the ALJ's decision that the present need for medical care is not related to the accidental injury of March 29, 2003.

The only issues to be decided are whether the Board has jurisdiction to hear this appeal and if so, whether claimant's present need for medical care is related to her underlying compensable claim.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant was employed as a technician for the City of Manhattan's Animal Shelter. On March 29, 2003, claimant was in the process of cleaning a kennel when a cat bit her on the right leg, above her ankle but somewhere below the knee. This caused her to fall to the floor. Claimant timely reported her accident, via e-mail, to Lynn Schumacher, her supervisor. Claimant's e-mail message did not include any specific reference to an injury to her knee nor did she request any treatment at that time.

Claimant testified that her knee began to swell and became painful after she got off work that day and by the next Sunday morning, it hurt to walk on it. When claimant returned to work the next week she was asked to fill out an accident report. This report of injury did not include any reference to pain in her knee. Claimant sought no treatment for her complaints nor did she specifically request treatment from her employer, although she testified that she told her supervisor that her knee was hurting and that she needed to “get it checked out.”<sup>1</sup>

Claimant continued to work at the animal shelter without incident until June 9, 2003. On that date, while at her home, claimant stepped off her deck and her right knee went backwards causing her to fall. She immediately sought treatment with her family physician, Dr. Atwood, in Wamego, Kansas. Dr. Atwood’s records indicate claimant stepped off her deck and injured her right knee. There is no reference to the March 29, 2003 event as the onset of her right knee pain.

Dr. Atwood referred claimant to an orthopaedist, Dr. Hodges, who ultimately performed surgery on her knee in July 2003. The bills for this treatment were handled through her private insurance carrier. Since that time claimant has begun to complain of left leg and back pain, which she attributes to her work-related accident of March 29, 2003.

Claimant was off work for a period of time following surgery. Upon her return to work she was terminated. After she retained counsel for her workers compensation claim, claimant was referred to Dr. Kimball Stacey for an evaluation. Dr. Stacey’s records indicate claimant reported to him that she twisted her knee on March 29, 2003 and fell out of the kennel and into a hallway.<sup>2</sup> There is no indication whether Dr. Kimball had the benefit of claimant’s prior records from Dr. Atwood or Dr. Hodges. Nonetheless, he expressed his opinion that claimant’s “need for treatment would relate from the work injury.”<sup>3</sup>

After hearing claimant’s testimony as well as that of her supervisor and the respondent’s human resources specialist and coordinator, the ALJ stated as follows:

. . . The Court agrees completely with the arguments of Mr. Kubin [respondent’s counsel]. If there was any need for treatment or if there is any need for treatment today, it’s for conditions related to this incident at home. The claimant’s request for treatment is denied.<sup>4</sup>

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<sup>1</sup> P.H. Trans. at 8.

<sup>2</sup> *Id.*, Ex. 1 at 2.

<sup>3</sup> *Id.*, Ex. 1 at 3.

<sup>4</sup> *Id.* at 54.

This finding was memorialized in a written Order on February 26, 2004 and later appealed by claimant on March 4, 2004.

Respondent first contends the Board has no jurisdiction to review this matter. Accordingly, the Board must determine if there is a jurisdictional basis to review the ALJ's Order at this stage of the proceedings.

The Board has jurisdiction to review a preliminary hearing finding of whether a worker's then present need for medical treatment was caused by an accident that occurred at work or whether it was caused by an intervening or subsequent accident. The Board has held that the issue is analogous to whether claimant has sustained an accidental injury arising out of and in the course of employment, which is a jurisdictional issue specifically cited in the Workers Compensation Act as being subject to Board review from a preliminary hearing order.<sup>5</sup> Thus, the Board has jurisdiction to consider this appeal.

After reviewing all the evidence contained within the record, the Board finds no reason to disturb the ALJ's preliminary hearing Order. Claimant admittedly suffered a compensable injury on March 29, 2003, but she neither requested nor received any medical treatment following that accident. No physician recommended that she have surgery following that accident nor are there any contemporaneous medical records nor accident reports that document her right knee complaints or swelling before the June 9, 2003 incident at claimant's home. The ALJ had an opportunity to observe the witnesses during the testimony, and was not persuaded by claimant's contention that her right knee complaints related back to the March 29, 2003 accident at work.

**WHEREFORE**, the Board affirms the preliminary hearing Order issued by Administrative Law Judge Bryce D. Benedict dated February 26, 2004.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June 2004.

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BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant  
Kip A. Kubin, Attorney for Self-Insured Respondent  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>5</sup> See K.S.A. 44-534a (Furse 2000); See also *Amburgey v. Duckwall-Alco*, No. 1,009,259, 2003 WL 22401219 (Kan. WCAB Sept.12, 2003).